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Tracy Collins Bank and Trust Company v. Richard H. Seiger, Connie Seiger, Jerry D. Timothy, Ann W. Timothy, Utah Title & Abstract Company, First Security State Bank, Salt Lake City Suburban Sanitary District No. 1, Transportation Safety Systems, Inc., Pacific States Cast Iron Pipe Co., Inc. : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Tracy Collins Bank and Trust Company v. Richard H. Seiger, Connie Seiger, Jerry D. Timothy, Ann W. Timothy, Utah Title & Abstract Company, First Security State Bank, Salt Lake City Suburban Sanitary District No. 1, Transportation Safety Systems, Inc., Pacific States Cast Iron Pipe Co., Inc.*, No. 14125.00 (Utah Supreme Court, 2001).

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14120

IN THE SUPREME COURT OF THE STATE OF UTAH

TRACY COLLINS BANK & TRUST
COMPANY, a Utah corporation,

Plaintiff,

vs.

RICHARD H. SEIGER and CONNIE
SEIGER, his wife; JERRY D.
TIMOTHY and ANN W. TIMOTHY,
his wife, UTAH TITLE &
ABSTRACT COMPANY, a Utah
corporation, FIRST SECURITY
STATE BANK, a Utah corporation,
SALT LAKE CITY SUBURBAN SANITARY
DISTRICT NO. 1, TRANSPORTATION
SAFETY SYSTEMS, INC., a Utah
corporation, and PACIFIC STATES
CAST IRON PIPE CO., INC., an
Oregon corporation,

Defendants.

Case No. 14,125

BRIEF AND CROSS-APPEAL OF DEFENDANTS-APPELLANTS

JERRY D. AND ANN W. TIMOTHY

APPEAL FROM THE JUDGMENT OF THE THIRD DISTRICT COURT FOR SALT LAKE
COUNTY, UTAH, HONORABLE ERNEST F. BALDWIN, JUDGE

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

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RICHARD H. SEIGER and CONNIE
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SALT LAKE CITY SUBURBAN SANITARY
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IN THE SUPREME COURT OF THE STATE OF UTAH

TRACY COLLINS BANK AND
TRUST CO.,

Plaintiff-Respondent,

vs.

Case No. 14,125

RICHARD H. SEIGER and CONNIE
SEIGER, his wife, JERRY D.
TIMOTHY and ANN W. TIMOTHY,
his wife, UTAH TITLE &
ABSTRACT COMPANY, a Utah
corporation, SALT LAKE CITY
SUBURBAN SANITARY DISTRICT
NO. 1, TRANSPORTATION
SAFETY SYSTEMS, INC., a
Utah corporation, and
PACIFIC STATES CAST IRON
PIPE CO., INC., an Oregon
corporation,

Defendants-Appellants.

NOTICE OF CROSS-APPEAL

Notice is hereby given that Jerry D. Timothy and Ann W. Timothy, his wife, defendants above named, hereby cross-appeal to the Supreme Court of the State of Utah, from the Findings of Fact, Conclusions of Law and Judgment and decree of foreclosure and order of sale entered in case #220,307 by the District Court of Salt Lake County, Utah, the Honorable Ernest F. Baldwin, Jr., District Judge presiding, on or about the 5th day of May, 1975. This appeal is taken pursuant to the provisions of Rule 74(a) and (b), URCP, as a cross-appeal and as a joint appeal with the appeal heretofore filed herein by First Security State Bank and Utah Title and Abstract Company.

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IN THE SUPREME COURT OF THE STATE OF UTAH

TRACY COLLINS BANK AND
TRUST CO.,

Plaintiff-Respondent,

vs.

Case No. 14,125

RICHARD H. SEIGER, et ux,
and et al.,

Defendants-Appellants.

BRIEF OF APPELLANTS TIMOTHYS

STATEMENT OF THE KIND OF CASE

Trust deed foreclosure. Timothys purchased real property without knowledge of plaintiff's trust deed, and executed a trust deed in favor of First Security State Bank who was also unaware of plaintiff's trust deed. The plaintiff did not use or activate the note for which the trust deed to plaintiff was issued or advance any funds thereon until after Timothys had purchased said property, and plaintiff had no obligation to advance any funds therunder.

The judgment entered purports to adjudge that the interest of Ann W. Timothy is subject to a judgment lien by reason of judgments awarded in separate actions in favor of defendants Transportation Safety Systems, Inc. and Pacific States Cast Iron Pipe Company. Ann W. Timothy was not a party to suits by either of said companies and said judgments are not against her.

Timothys adopt by reference the statement of the kind of case contained in the brief of First Security State Bank and Utah Title and Abstract Co. filed herein.

DISPOSITION IN LOWER COURT

Court determined that Tracy's trust deed was entitled to priority over Timothys' ownership and title to said property, and to the trust deed given by Timothys to First Security State Bank, and awarded judgment of foreclosure of both trust deeds.

The Court further determined that judgment liens held by defendants Transportation Safety Systems, Inc. and Pacific States Cast Iron Pipe Company against Jerry D. Timothy only, constituted judgment liens against Ann W. Timothy's interest in the real property being foreclosed, although she was not even a party to those separate lawsuits.

RELIEF SOUGHT ON APPEAL

Timothys seek reversal of lower court's decision as to priority of Tracy's lien over the ownership of Timothys, and of that portion of the judgment adjudging that Ann W. Timothy's ownership is subject to the judgment lien claims of Pacific States and Transportation Safety Systems, or that failing, for a new trial.

STATEMENT OF FACTS

Timothys incorporate by reference and re-allege the statement of facts contained in the brief filed herein by First Security State Bank and Utah Title and Abstract. The position of Timothys is similar to that of First Security State Bank except that Timothys claim a fee interest in the property (subject to the

trust deed to First Security State Bank), whereas that organization's claim is limited to those under that trust deed.

Tracy alleged in it's complaint that the judgment liens were against Jerry D. Timothy only. (R. 3, Par. #10 as to Transportation Safety Systems, Inc. and R. 4, Par. #11 as to Pacific States Cast Iron Pipe Company). Transportation Safety Systems admitted in it's answer (R. 17, Par. #2) and Pacific States Cast Iron Pipe Company admitted in it's answer (R. 73, par. #1) that their judgments applied only to Jerry D. Timothy.

When the judgment was entered it erroneously adjudged that the interest of Ann W. Timothy was also subject to said judgment liens.

ARGUMENT POINT I

JUDGMENT AGAINST ANN W. TIMOTHY FORECLOSING HER INTEREST IN THE REAL PROPERTY AS TO JUDGMENT LIENS OF TRANSPORTATION SAFETY SYSTEMS, INC., AND PACIFIC STATES CAST IRON PIPE COMPANY IS IMPROPER SINCE THOSE JUDGMENTS WERE AGAINST JERRY D. TIMOTHY ONLY.

It is undisputed that neither Transportation Safety Systems or Pacific States has ever had a judgment against Ann W. Timothy (R. 3, 4 & 17). Those judgments do not constitute judgment liens against the ownership of Ann W. Timothy in and to the real property involved in this lawsuit. To the extent that the judgment herein purports to impose those judgment liens upon Ann W. Timothy's half of that property, said judgment is in error and should be reversed. To that extent, the judgment entered herein is contrary to the admitted and undisputed facts.

POINT II

BECAUSE THERE WAS NO OBLIGATION TO ADVANCE FUNDS TRACY HAS
NO PRIORITY OVER CLAIMS OF TIMOTHYS

Timothys incorporate herein by reference thereto and
re-allege the argument contained in point I of the brief
filed herein by defendants First Security State Bank and
Utah Title and Abstract Co.. Timothys and First Security
State Bank both claim an estate in and to the real property,
and that their interest is superior to that of Tracys.
Accordingly, the law and arguments stated in the First Security
State Bank brief is identical to the claims of Timothys.

CONCLUSIONS

The Court should order modification of the judgment to
eliminate therefrom those portions which purport to subject
the ownership by Ann W. Timothy to judgment liens against
Jerry W. Timothy.

The Court should also order the judgment modified to
adjudge that the ownership in that property by the Timothys
is superior to the claims of Tracys in and to said property.

Dated this 28th day of November, 1975.

Respectfully submitted,

Ronald C. Barker

Ronald C. Barker

CERTIFICATE OF SERVICE

I hereby certify that I caused three copies of the foregoing
brief and cross-appeal to be mailed, postage prepaid, this 1
day of December, 1975, to each of the following.

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